IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 30, 2008

STATE OF TENNESSEE v. DENISE ANDREA TAYLOR

Appeal from the Criminal Court for Sullivan County
No. S48,801 Robert H. Montgomery, Jr., Judge

No. E2007-01816-CCA-R3-CD - Filed May 22, 2009

The defendant, Denise Andrea Taylor, appeals as of right from her convictions by a Sullivan County jury of two counts of obtaining a Schedule III controlled substance, Lorcet, by fraud, a Class D felony, and one count of attempting to obtain a Schedule III controlled substance, Lorcet, by fraud, a Class D felony. She was sentenced to four years for each offense and ordered to serve the sentences concurrently with each other and consecutively to sentences she had received for unspecified Georgia convictions. The defendant contends that the evidence is insufficient to support two of her convictions. The State contends that this court does not have jurisdiction because the record does not reflect that a written order denying the defendant's motion for new trial was filed. We conclude that this court has jurisdiction to consider the appeal and that the evidence is sufficient to support the defendant's convictions. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JERRY L. SMITH and CAMILLE R. MCMULLEN, JJ., joined.

Richard A. Tate, Assistant Public Defender, Blountville, Tennessee, for the appellant, Denise Andrea Taylor.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Greeley Wells, District Attorney General and J. Lewis Combs, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At the trial, Michelle Miethe testified that she was employed at Walgreen's. She said that she was working on January 16, 2004, and that she retrieved a message from a person who identified herself as Rebecca from Dr. "Krish's" office and left a prescription order for Lorcet to be filled for Ronnie McKee. Dr. Miethe said she checked the DEA number for the doctor and determined the physician to be Dr. Krishnaswamy. She said it was unusual for a physician to be identified by a nickname when a member of the physician's staff was calling in a prescription. She said that

because the pharmacy staff wanted to verify the prescription with the doctor's office, the prescription was only partially filled. She said it was picked up by a customer after her shift ended.

Dr. Miethe testified that she called Dr. Krishnaswamy's office the following Monday, January 19, and that the doctor's office was unable to verify the prescription or that there was an employee of the office named Rebecca. She then contacted the Kingsport Police Department.

Dr. Miethe testified that she checked the pharmacy's records for Ronnie McKee and determined that on December 9 and 31, 2003, the pharmacy had filled another Lorcet prescription from the same doctor for the same patient. She said the December prescription included one refill, which accounted for the two dates. She said this prescription had been submitted in writing, rather than by telephone, and that she had no knowledge of the person who had brought the prescription to the pharmacy. She said the written prescription was dated November 21.

Ed Murff testified that he was a pharmacist who had been employed at Walgreen's in 2003 and 2004. He said he discussed the January 16 prescription with Dr. Miethe and that they decided to fill the prescription partially and to call to verify the prescription on Monday morning. He said that an attractive woman about sixteen or seventeen years old purchased the prescription that afternoon. He said she returned to the drive-through on January 19, and although he remembered there being two people in the car, he did not recall getting a good look at her because he was busy with other duties.

Dr. Murff was asked to review the written prescription dated November 21, 2003. He stated that it was not suspicious.

Dr. Guha Krishnaswamy testified that he was a physician specializing in asthma, allergic disease, and immune problems. He said that he saw a patient named Ronnie McKee on November 21, 2003, for a migraine. He said that he gave the patient an injection but that he did not think he gave him a prescription. He said the patient had reported to him that he did not have the prescriptions in question filled.

Dr. Krishnaswamy testified that he reviewed the November 21 prescription and the one prepared by Walgreen's from the telephone order on January 16. He said that the patient's name, signature, and probably the date on the November 21 prescription were in his handwriting. He said, however, that the rest of the prescription was not in his handwriting. He said the prescription was on his prescription paper. He said that he usually filled in the entire prescription himself, rather than having a nurse write part of it. The doctor stated that he was very cautious about narcotic prescriptions and that he would "circle the refill zero and . . . write refill zero, literally write it out in words so . . . nobody can strike it and change it." He said that he usually wrote narcotic prescriptions for a quantity of thirty, which he would write out as a word, and that he would not have written a prescription for a quantity of ninety. He said that he might occasionally leave blank but signed prescription forms with his trusted nurse if he were going to be out of town but that he did not think he was out of town during the time period relevant to this case.

Dr. Krishnaswamy testified that he did not think anyone in his office would have called the second prescription to Walgreen's. He said he would not have authorized a prescription for a quantity of ninety.

Dr. Krishnaswamy testified that the defendant looked familiar to him but that he was not sure he recognized her. He said that on November 20 and 21, 2003, there was a temporary licensed practical nurse working in his office and that there had been other temporary nurses rotating through the office. He said prescription pads were kept in a drawer near the telephone and in his pocket and that they contained duplicates, such that the patient was given a white copy and a second, yellow copy was placed in the patient's file.

Cheryl Bennett testified that she was a nurse and had been employed by Dr. Krishnaswamy for twelve years. She identified the defendant as having worked in the doctor's office as a temporary nurse on November 20 and 21, 2003. She said that the defendant's duties were to get patients into an examining room, to assist the doctor with the patients, and to call in prescriptions. She said Dr. Krishnaswamy practiced with a group but that he, the defendant, and she were the only three people working in the allergy clinic on November 20 and 21.

Ms. Bennett testified that Ronnie McKee was a patient of an internist in the same group, as well as a patient of Dr. Krishnaswamy. She verified that the doctor saw McKee on November 21. She said that after Walgreen's contacted the office, she reviewed McKee's chart and determined that he had not been prescribed Lorcet.

Ms. Bennett testified that normally the nurse assisting the doctor would call in prescriptions. She said, however, that she sometimes might be asked to do it. She denied anyone named Rebecca worked in the allergy clinic from November 20 until January 16. She said the doctor was commonly referred to as Dr. "Krish" in the Johnson City area. She said that if she called in a prescription, she would first identify the doctor as Dr. Krishnaswamy and then would say Dr. "Krish."

Ms. Bennett testified that the November 21 prescription was on one of Dr. Krishnaswamy's forms. She said the signature was in his handwriting but that the body of the prescription was not in her handwriting, that of the doctor, or that of anyone else in the office whom she recognized. She said it would be unusual for Dr. Krishnaswamy to write in the name of the patient and to sign a prescription but to leave the body of the form blank. She said the doctor did not write narcotic prescriptions with refills. She said that the doctor did sign blank prescription forms, sometimes, but that they were kept locked away, and that only she and the supervisor had access to them. She said the forms signed in blank would not have the patient's name on them.

Elizabeth Rosier testified that she was employed by Comforce, a staffing agency. She said the defendant was a former employee of Comforce. She identified the defendant's employment records, which were received as an exhibit.

Susan Randolph, an employee of Comforce, testified that she interviewed the defendant for temporary nursing employment on November 6, 2003. She said the defendant had previous experience from Georgia and that someone from Comforce would have verified the defendant's credentials and references. Ms. Randolph said the defendant was assigned to ETSU Physicians, where she worked on November 20 and 21 but failed to appear for work or call on November 25. She said that when the defendant was contacted, the defendant stated she overslept. She said the defendant was not retained as an employee after that.

Detective Sean Chambers of the Kingsport Police Department testified that he and Detective Ferguson went to Walgreen's on January 19 after having been notified that the defendant was on her way to pick up a fraudulent prescription. He said that when the car in which the defendant was a passenger arrived at the drive-through window, he went outside and found the defendant and a sixteen-year-old girl. He said the two were taken into custody and taken to the police station.

Det. Chambers testified that before he arrested the defendant, he asked her who Ronnie McKee was and that she said he was a friend of her daughter. He said that Officer Darrel McCoy, who transported the defendant and her daughter to the police station, turned on a tape recorder in his patrol car. He identified the tape, which was received as evidence.

Det. Chambers identified several items of evidence that were recovered from the defendant's car. The first was an address book bearing the defendant's name, which was discovered inside a purse in the car. He said the address book contained a fictitious address, 1666 Carter's Valley Road, which he said was the same address as was on the written prescription. He said he called the patient telephone number on the prescription and reached Surgoinsville Middle School. He said there was an entry in the address book for ETSU Physicians and Associates with two phone numbers, one of which appeared on the prescription. He said that the book also contained the name Ronnie McKee and a number underneath the name that corresponded to the prescription number that was filled on December 9. He identified a vehicle registration form recovered from the console of the car in which the defendant had come to the pharmacy. The form reflected that the car was registered to the defendant at "1670 Carters Vly Rd" in Surgoinsville. He said the search of the car also revealed a Walgreen's receipt dated January 16, 2004. In addition, he identified a yellow carbon copy of the written prescription dated November 21, which he said was identical to the original prescription except that it lacked the address, date of birth, and telephone number that were on the original. He said this carbon copy was found in the center console of the defendant's car.

The jury convicted the defendant of all three counts. The trial court sentenced the defendant to four years for each conviction, to be served concurrently. The court ordered that the sentences be served consecutively to the defendant's "Georgia prior convictions" and assessed a $10,000 fine. The judgments were entered on May 2, 2007. On May 8, 2007, the defendant filed a timely motion for new trial in which she argued that the evidence was insufficient to support the convictions, that the verdict was contrary to the law and the evidence, and that the evidence preponderated against the guilt of defendant and in favor of her innocence. At a hearing on the motion for new trial, the trial court orally denied the motion. The record also contains a minute entry from July 12, 2007, which reflects that the trial court "denied a motion for new trial and granted a probationary appeal bond."

The record does not contain a written order denying the motion. The defendant subsequently filed a notice of appeal.

On appeal, the defendant raises the sole issue of the sufficiency of the evidence. However, before we may review that issue, we must first address the State's claim that this court lacks jurisdiction over the appeal because no written order denying the motion for new trial is included in the record.

I

Tennessee Rule of Appellate Procedure 4(c) provides that in criminal actions, "if a timely motion or petition under the Tennessee Rules of Criminal Procedure is filed in the trial court by the defendant . . . under Rule 33(a) for a new trial, . . . the time for appeal for all parties shall run from entry of the order denying a new trial . . . ." T.R.A.P. 4(c). Until the trial court denies the motion for a new trial, this court does not have jurisdiction over the case. Evans v. Wilson, 776 S.W.2d 939, 941 (Tenn. 1989) (construed in State v. Billy Bivens, No. 03C01-9711-CR-00497, McMinn County, slip op. at 3 (Tenn. Crim. App. Oct. 12, 1989)); Hutchison v. ARO Corp., 653 S.W.2d 738, 740 (Tenn. Ct. App. 1983).

The record in the present case contains a July 12, 2007 minute entry noting the denial of the motion for new trial. In addition, the transcript of the motion for new trial reflects that the trial court denied the motion. The question whether a minute entry noting the denial of a motion for new trial is sufficient to confer jurisdiction on this court is one upon which panels of this court have reached different results. Compare State v. Perry A. March, No. M2006-02732-CCA-R3-CD, Davidson County, slip op. at 2-3 (Tenn. Crim. App. July 15, 2008) (citations omitted), reh'g denied (Tenn. Crim. App. Aug. 29, 2008), app. filed (Tenn. Oct. 27, 2008) with State v. Kim McBride Murphy, No. E2007-02647-CCA-R3-CD, Cumberland County, slip op. at 2-3 (Tenn. Crim. App. Oct. 17, 2008) (concluding that the appeal should be dismissed when no "written order" denying a motion for new trial is in the record). Recently, our supreme court resolved the conflict by answering the question affirmatively. State v. Terry Lynn Byington, ___ S.W.3d ___, No. E2006-02069-SC-R11-CD, Sullivan County (Tenn. May 5, 2009) ("[W]e hold that a minute entry is sufficient to confer appellate jurisdiction under Rule 4 in a criminal case, [but] better practice dictates that the trial court enter a written order.") We hold that this court has jurisdiction to consider the defendant's appeal because the record contains the trial court's minutes showing it disposed of the motion for new trial, from which the defendant filed a timely notice of appeal.

II

The defendant challenges the sufficiency of the convicting evidence for the December 9 and December 31 offenses. She contends that there is no evidence that she brought or picked up the prescriptions or was present at Walgreen's on those dates.

Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). We do not reweigh the evidence but presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Any questions about the credibility of the witnesses were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). "A crime may be established by direct evidence, circumstantial evidence, or a combination of the two." State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). For an accused to be convicted of a criminal offense based solely upon circumstantial evidence, the facts and the circumstances "must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant, and that beyond a reasonable doubt." State v. Sutton, 166 S.W.3d 686, 691 (Tenn. 2005) (quoting State v. Crawford, 470 S.W.2d 610, 612 (1971)).

The statute under which the defendant was convicted provides, "It is unlawful for any person knowingly or intentionally to . . .[a]cquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge." T.C.A. § 53-11-402(a)(3) (2008). The evidence reflects that the defendant was a temporary worker in Dr. Krishnaswamy's office on a day that Ronnie McKee was treated. The doctor's records reflected that he had never prescribed Lorcet for Ronnie McKee, yet the defendant and her minor daughter were apprehended on a later date at Walgreen's attempting to obtain Lorcet from a forged prescription for McKee. An address book bearing the defendant's name contained McKee's name and the prescription number for the prescription that was filled on December 9, and Dr. Krishnaswamy's office name and telephone number, was found inside a purse in the defendant's car. The defendant's address on her vehicle registration form was 1670 Carter's Valley Road, and fictitious address on the fraudulent prescriptions was 1666 Carter's Valley Road. A receipt for the January 16 prescription was underneath the driver's seat of the defendant's car. A carbon copy of the prescription that was filled on December 9 and refilled on December 31 was in the center console of the defendant's car. Considering this evidence in the light most favorable to the State, we hold that the evidence was sufficient to exclude every hypothesis other than the defendant's guilt of knowingly or intentionally acquiring or obtaining possession of Lorcet, a controlled substance, through misrepresentation, fraud, forgery, deception or subterfuge.

In consideration of the foregoing and the record as a whole, the judgment of the trial court are affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE